

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION**

William B. Gray, III, d/b/a Greenwood)
Clinic of Chiropractic, individually and for)
the benefit and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

Written Order

8:08-CV-01833-GRA

The Talking Phone Book, trade name for)
Hearst Holdings, Inc., a/k/a White Directory)
Publishers, a division of Hearst Holding)
Holdings, Inc., a/k/a White Directory)
Holdings Carolina, Inc., a/k/a White)
Directory of Carolina, Inc., a/k/a White)
Directory Holdings Pennsylvania, Inc., a/k/a)
White Directory of Pennsylvania, Inc., and)
SAIA Holdings, L.L.C., and SAIA)
Publishing Co., and Joe Tidwell and)
Michael Brown,)

Defendants.)

This matter comes before the Court for the resolution of two motions—the plaintiff’s motion to amend the complaint, and the defendants’ motion to dismiss. This action was originally filed in the Pickens County Court of Common Pleas. On May 9, 2008 the action was removed to this Court. On June 13, 2008, the defendants filed a motion to dismiss. On July 30, 2008, the plaintiffs filed a motion to amend the complaint. On July 31, 2008, the plaintiff responded to the defendant’s motion to dismiss. On September 2, 2008, the defendants filed a reply memorandum of law in further support of motion to their motion to dismiss and in opposition to plaintiff’s motion for leave to amend the complaint (doc. 54). In their September 2, 2008

motion, the defendants make three arguments, two of which relate directly to the amended complaint.

First, the Court will grant the plaintiff's motion to amend the complaint. Federal Rule of Civil Procedure 15 (a)(2) provides, "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. *The court should freely give leave when justice so requires.*" (emphasis added). In this instance, the plaintiff moves to amend in order to:

1. Plaintiff seeks to file a complaint that is properly captioned after Plaintiff's lawsuit was removed from state court;
2. Plaintiff seeks to dismiss some named Defendants, without prejudice, based on unconfirmed information received from defense counsel about the nature of the relationships between the various parties;
3. Plaintiff seeks to add a Breach of Contract claim that was already pled as part of the already pled fraud claims;
4. Plaintiff seeks to correct and more accurately state substantive allegations in various claims; and
5. Plaintiff seeks to redress some alleged deficiencies regarding the level of particularity used when stating allegations of fraud claims.

Based on the totality of these five reasons, the Court finds that justice is served by allowing the plaintiffs to amend their complaint.

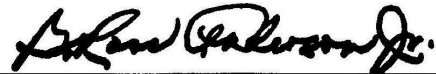
Turning to the defendant's motion to dismiss, the Court finds that the motion seeking to dismiss the first original complaint is moot. However, the Court construes the defendant's reply memorandum of law in further support of motion to dismiss and in opposition to plaintiff's motion for leave to amend the complaint (Doc. 54), as a motion to dismiss the second complaint. Accordingly, the Court will allow the plaintiffs ten (10) days from the issuance of this order in which to respond to the

defendant's reply memorandum of law in further support of motion to dismiss and opposition to plaintiff's motion for leave to amend the complaint (doc. 54) as if it were a motion to dismiss.

IT IS THEREFORE ORDERED THAT:

- 1) The plaintiff's motion to amend the complaint is granted;
- 2) The defendant's motion to dismiss the plaintiff's first complaint is dismissed as moot;
- 3) The plaintiff has ten (10) days in which to respond to the defendant's reply memorandum of law in further support of motion to dismiss and opposition to plaintiff's motion for leave to amend the complaint (doc. 54);
- 4) the hearing scheduled for November 24, 2008 is cancelled.

IT IS SO ORDERED



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
November 20, 2008